

Serial No.: 10/099,786
Amendment dated June 8, 2005
Response to Office Action mailed March 8, 2005

REMARKS/ARGUMENTS

The Office Action of March 8, 2005 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Claims 1-11 are pending. Claims 1-11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,350,411 to Ryan ("Ryan"). In the alternative, claims 1-11 were rejected under 35 U.S.C. § 103(a) as being obvious over Ryan.

Amendment to the Specification

The specification has been amended in two places to recite the serial number of the co-pending application as suggested by the Office Action. Entry of this change is respectfully requested.

Amended Claims

Claims 1 and 6 are amended to clarify the scope of the subject matter claimed. Applicants respectfully submit that the scope of claim 1 has not been altered by the amendment and that the scope was apparent from the disclosure, however, the amendment is believed to provide further clarification.

Claim 11 has been amended to revise an informality. No change in the scope of claim 11 was intended or believed to be made.

Entry of the above minor changes is respectfully requested.

Rejection Under 35 U.S.C. § 102(b) - Ryan

Independent claims 1, 6 and 11 stand rejected under 35 U.S.C. § 102(b) as anticipated by Ryan.

Regarding independent claim 1, the Office Action admits that Ryan does not disclose the loading of a protocol driver. As Ryan does not disclose all the limitations of claim 1, Ryan cannot anticipate claim 1.

Serial No.: 10/099,786
Amendment dated June 8, 2005
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Claims 2-5 depend from claim 1 and are not anticipated for at least the reasons claim 1 is not anticipated.

Regarding independent claim 6, Ryan fails to disclose an external telemetry unit. As Ryan does not disclose all the limitations of claim 6, Ryan cannot anticipate claim 6.

Claims 7-10 depend from claim 6 and are not anticipated for at least the reasons claim 6 is not anticipated.

Regarding independent claim 11, Ryan fails to disclose a "protocol driver interface" in a telemetry unit for communicating with an implantable medical device. As Ryan does not disclose all the limitations of claim 11, Ryan cannot anticipate claim 11.

Accordingly, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. § 103(a) - Ryan

Independent claims 1-11 were rejected under 35 U.S.C. § 103(a) as being made obvious by Ryan.

Ryan is directed towards a telemetry subsystem of an implantable device. (Ryan, Abstract). Aspects of the pending application are directed towards components of an external telemetry system. Therefore, Applicants respectfully submit that Ryan does not disclose, teach or suggest the limitations of the pending claims and thus is unable to render the pending claims obvious. More particularly, to make a *prima facie* case of obviousness, all the limitations must be disclosed, taught or suggested by the references of record. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criteria must be met. ... [Third], the prior art reference[s] ... must teach or suggest all the claim limitations"). The Applicants respectfully assert that the Office Actions fails to make a sufficient showing to support a *prima facie* case of obviousness.

Turning to independent claim 1, Office Action admits that Ryan does not disclose the loading of a protocol driver. Furthermore, Ryan is not directed towards "an external telemetry unit." As Ryan does not disclose, teach or suggest all the limitations of claim 1, Ryan cannot be said to make claim 1 obvious by itself. The Office Action has not provided any other reference that may be combined with Ryan to suggest all the limitations of claim 1. Therefore, the

Serial No.: 10/099,786
Amendment dated June 8, 2005
Response to Office Action mailed March 8, 2005

references of record fail to disclose, suggest or teach all the limitations of claim 1. Therefore, for at least these reasons, claim 1 is nonobvious in view of Ryan.

Claims 2-5 depend from claim 1 and are nonobvious for at least the above reasons and for the additional limitations recited therein.

Looking at independent claim 6, the Office Actions essentially admits that the limitations of claim 6 were not disclosed or suggested by Ryan. Indeed, the Office Action does not suggest that Ryan actually discloses or suggests any of the details of claim 6. As noted above, however, the references of record must disclose or suggest all the limitations in order to support a *prima facie* case of obviousness. The Office Action suggested that Ryan mentioned a host unit, however, Applicants' respectfully submit that the "mentioning" of a host unit in Ryan is insufficient to support a *prima facie* case of obviousness because such a "mentioning" does not disclose or suggest the details recited in claim 6. No other reference was provided that might disclose, teach or suggest the details of claim 6. Therefore, as not all the limitations of claim 6 were disclosed or suggested by Ryan, it cannot render independent claim 6 obvious.

Claims 7-10 depend from claim 6 and are nonobvious for at least the above reasons and for the additional limitations recited therein.

Turning to independent claim 11, again, the Office Actions essentially admits that Ryan fails to disclose all the limitations of claim 11. For example, as noted above, Ryan fails to disclose the "protocol driver interface." However, to support a *prima facie* case of obviousness, all the limitations must be disclosed or suggested by the references of record. The Office Action has not provided additional references that may be combined with Ryan, thus Ryan necessarily must disclose or suggest all the limitations of claim 11. Ryan fails to do this. Accordingly, as Ryan does not disclose all the limitations of claim 11, Ryan cannot sustain an obviousness-type rejection.

Therefore, withdrawal of this ground of rejection is respectfully requested.

Serial No.: 10/099,786
Amendment dated June 8, 2005
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CONCLUSION

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections and objections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same.

Respectfully submitted,

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Dated: June 08, 2005

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